

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ICIPA S.R.L.	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
LEARJET, INC.	:	NO. 97-2725

M E M O R A N D U M

Padova, J.

July 9, 1997

ICIPA S.R.L. ("Plaintiff"), brings this action against Learjet, Inc. ("Defendant"), seeking to recover money damages stemming from the 1994 crash, in Europe, of an aircraft manufactured by Defendant. Before the Court is Plaintiff's Motion to remand this action to state court. For the reasons that follow, the Motion is denied.

I. Facts

On April 4, 1994, shortly after take-off from an airport in Seville, Spain, Plaintiff's Learjet 55 was forced to make an emergency crash landing, allegedly due to multiple systems failure. On April 3, 1996, Plaintiff filed a Praecipe to Issue a Writ of Summons and a Summons in the Court of Common Pleas of Philadelphia County ("Court of Common Pleas"). On April 19, 1996, an Affidavit of Service of Summons was filed with the Prothonotary's office for the Court of Common Pleas. On February 11, 1997, Defendant filed a Praecipe to File Complaint and on the same day the Prothonotary issued a rule upon Plaintiff to file its Complaint. On April 3,

1997, Plaintiff filed its Complaint, alleging causes of action for negligence, breach of warranty and product liability. On April 20, 1997, Defendant filed a Notice of Removal to this Court.

II. Legal Standard

28 U.S.C.A. § 1446 (West 1994) ("Procedures for Removal") provides, in part:

(a) A defendant or defendants desiring to remove any civil action . . . from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

III. Discussion

Plaintiff argues that this case should be remanded because

Defendant's Notice of Removal is untimely [as it] is predicated upon diversity of citizenship, which is an issue which Defendant knew about, or should have known about, from the inception of this litigation by the very contents of the caption set forth in the original Praecipe to Issue Writ of Summons which was filed over a year ago.

(Pl.'s Mem. Supp. Mot. Remand at 2) ("Pl.'s Mem.").

The question of what constitutes an initial pleading for purposes of triggering the thirty day removal period was addressed in Foster v. Mut. Fire, Marine and Inland Ins. Co., 986 F.2d 48 (3d

Cir. 1993). In that case, the United States Court of Appeals for the Third Circuit held that "§ 1446(b) requires defendants to file their Notices of Removal within thirty days after receiving a writ of summons, praecipe or complaint which in themselves provide adequate notice of federal jurisdiction" Id. at 54 (emphasis added). The inquiry mandated by Foster is confined to the "four corners" of the pleadings and is succinct, examining only "whether the document informs the reader, to a substantial degree of specificity, whether all the elements of federal jurisdiction are present." Id. at 53 (citation and internal quotation marks omitted).

The dispositive question sub judice is whether the pre-Complaint documents in the state action alleged the following two jurisdictional prerequisites: (1) the presence of parties which were "citizens of a State and citizens . . . of a foreign state," 28 U.S.C.A. § 1332(a)(2) (West 1993), and; (2) an amount in controversy exceeding \$50,000. 28 U.S.C.A. § 1332(a) (West 1993).¹

The Praecipe to Issue a Writ of Summons and the Summons contain nothing more than the names of the parties and their respective addresses.² (See Pl.'s Mem. Ex. A). Under the name of

¹ The Court recognizes that, effective January 17, 1997, the jurisdictional amount was raised to \$75,000. See 28 U.S.C.A. § 1332(a) (West Supp. 1997). This new amount, however, would not apply to the pre-Complaint filings in the instant action.

² Defendant concedes having been served. (See Def.'s Mem. Opp'n Mot. Remand at 2-3).

Plaintiff in the caption is listed "Viale Certosa, No. 249, Milan, Italy." Under the name of Defendant in the caption is listed "One Learjet Way, Wichita, KS 67209." (See id.).

In order to establish jurisdiction under § 1332(a)(2), however, it is the citizenship of the parties, and not merely their residences or addresses, which must be alleged. Krasnov v. Dinan, 465 F.2d 1298 (3d Cir. 1972); QVC, Inc. v. J.D. Ross Int'l, Inc., Civ. A. No. 95-7946, 1996 WL 156422, at * 2 (E.D. Pa. Apr. 3, 1996) ("[t]here is no indication of QVC's citizenship on the documents served upon the defendant. The documents merely state the address of QVC and this alone could not inform the defendant that all the elements of federal jurisdiction were present"); Robinson v. Nutter, Civ. A. No. 94-7758, 1995 WL 61158, at *2 (E.D. Pa. Feb. 14, 1995). The remaining pre-Complaint, court-related documents -- i.e., the Civil Cover Sheet, (see Pl.'s Mem. Ex. B), the Case Management Conference Memorandum, (see Pl.'s Mem. Ex. C), the Scheduling Order, (see Pl.'s Mem. Ex. D), and the Case Management Order, (see Pl.'s Mem. Ex. F) -- also fail to expressly allege the citizenship of Plaintiff.³ In fact, the thirty day window within which Defendant had to move pursuant to § 1446 did not commence until the Complaint -- which did allege citizenship and the jurisdictional amount -- was filed on April 3, 1997. Thus, Defendant's Notice of Removal, filed 17 days later, was not

³ In light of this finding, the Court need not address the question of whether the pre-Complaint filings alleged the proper jurisdictional amount.

untimely.

An appropriate Order follows.